

Subchapter 12

— Removal of Unattended or Abandoned Vehicles

27-50-1201. Applicability.

(a) The provisions of this subchapter shall apply to any person, firm, organization, or other entity engaged in the towing or storage of vehicles in the State of Arkansas.

(b) The provisions of this subchapter shall not apply to the following tow vehicles and related equipment:

(1) Car carriers capable of carrying five (5) or more vehicles and which have federal Interstate Commerce Commission authority;

(2) Tow vehicles owned by a governmental entity and not used for commercial purposes; and

(3) Tow vehicles that are registered in another state, operating under federal Interstate Commerce Commission authority and which do not regularly do business or solicit business in the State of Arkansas. However, any tow vehicle for which this exemption is claimed must be in compliance with § 27-35-112.

History. Acts 1993, No. 1000, § 1; 2005, No. 1878, § 3.

27-50-1202. Definitions.

For the purposes of this subchapter, unless the context otherwise requires:

(1) “Abandoned” means any vehicle deemed to be unattended as defined in this section;

(A) As to which the owner has overtly manifested some intention not to retake possession; or

(B) Which remains unattended, whether in its first-found location or in another location to which it has been removed pursuant to this subchapter, for a period of thirty (30) days, during which period the owner has given no evidence of an intent to retake possession;

(2) “Consent” means towing, storage, or recovery of any vehicle, which towing, storage, or recovery is done with the permission of the owner or other person in charge of the vehicle;

(3) “Nonconsent” means towing, storage, or recovery of any unattended or abandoned vehicle as defined in this subchapter or any disabled or inoperative vehicle for which the owner preference is waived by the owner or person in charge thereof;

(4) “Owner” of an unattended or abandoned vehicle shall in the absence of conclusive evidence to the contrary be deemed to be the person in whose name the vehicle is registered with the Office of Motor Vehicle of the Revenue Division of the Department of Finance and Administration or in whose name the vehicle is registered in any other state;

(5) “Owner preference” means the right of the owner, his or her agent, or any competent occupant of any disabled or inoperative vehicle to request some responsible and reasonable person, gratuitous bailee, or bailee for hire of his or her choosing to take charge and care of the vehicle;

(6) “Person” means any individual, partnership, corporation, association, or other entity;

(7) “Public way” means any road, highway, or street over which the public may travel, including the traveled surface and any berm or shoulder thereof. Nothing herein shall be

applicable to vehicles left unattended or abandoned on private property and subject to § 27-50-1101 et seq.;

(8) “Removal” means that an officer of any law enforcement agency may request a towing and storage firm which is licensed by the Arkansas Towing and Recovery Board to engage in nonconsent towing of vehicles to:

(A) Remove and store any unattended or abandoned vehicle pursuant to this subchapter;

(B) Remove and store any disabled or inoperative vehicle for which the owner or person in charge thereof has waived his or her right to owner preference as defined in this section; or

(C) Remove and store any vehicle in which the operator was apprehended by law enforcement officers;

(9) “Tow vehicle” means any motor vehicle or related equipment subject to registration in the State of Arkansas which is used to tow, recover, upright, transport, or otherwise facilitate the movement of vehicles on public highways;

(10) “Unattended” means any vehicle left on public property without the consent of an authority in charge of the property or on or near a public way without some person, gratuitous bailee, or bailee for hire in possession of the vehicle and that:

(A) Is located within a distance of three feet (3') of the traveled surface of the public way;

(B) Is located on or near a public way at a distance of three feet (3') or more of the traveled surface of the public way for a period of twenty-four (24) hours or more;

(C) Is not located on or near a public way but is left for a period of forty-eight (48) hours or more;

(D) Does not remain in the custody of some responsible person following an accident where the operator has been removed to a hospital or is otherwise unable to make personal arrangements for the vehicle's care;

(E) Was operated to a place of apprehension by law enforcement under police power and the operator thereof removed from the vehicle and taken into police custody;

(F) Is located upon any public right of way and, due to geographic location, traffic density, or climatic conditions, is creating an immediate and substantial hazard to the motoring public, as determined by a law enforcement officer; or

(G) Is subject to seizure by law enforcement under either a statute, the Arkansas Rules of Criminal Procedure, or a lawful court order; and.

(11) “Vehicle” means any device by which persons or things may be transported upon a public highway and which is of the type subject to registration in Arkansas.

History. Acts 1993, No. 1000, § 2; 1997, No. 381, § 1; 1997, No. 392, § 1; 1999, No. 1279, § 4; 2001, No. 1830, §§ 1, 2; 2007, No. 1053, § 1.

27-50-1203. Arkansas Towing and Recovery Board — Creation.

(a) (1) There is hereby created the Arkansas Towing and Recovery Board consisting of nine (9) members appointed by the Governor and confirmed by the Senate, who shall serve terms of three (3) years.

(2) (A) Four (4) members shall be appointed from the towing industry and shall be licensed by the board to engage in nonconsent towing, with one (1) each of the members being a resident of each of the four (4) congressional districts.

(B) Two (2) members who are permitted to engage in the consent-only business shall be appointed from the state at large.

(C) Two (2) members who are not associated with the towing industry shall be appointed from the state at large.

(D) One (1) member shall be appointed from the insurance industry.

(b) The appointed board members shall be residents of the State of Arkansas at the time of appointment and throughout their terms.

(c) (1) The members shall determine by majority vote of the quorum of the board who shall serve as chair.

(2) The chair shall be elected annually from the membership of the board.

(d) (1) The board shall meet at such times and places that the chair deems necessary, but no meetings shall be held outside the State of Arkansas.

(2) Five (5) of the members of the board shall constitute a quorum for the purpose of transacting business.

(3) All actions of the board shall be by a quorum.

(e) (1) The board shall promulgate rules and regulations to carry out the intent of this subchapter and shall regulate the towing industry, including:

(A) Establishing reasonable licensing, insurance, and equipment requirements for any person engaging in towing and related services for safety purposes under this subchapter;

(B) Establishing reasonable tow truck safety requirements for any tow vehicle as defined in this subchapter;

(C) Establishing a procedure to accept and investigate complaints from a consumer who claims that he or she has been overcharged for nonconsent towing, recovery, or storage fees;

(D) Determining and sanctioning excessive or unnecessary non-consent towing fees, recovery, and storage charged to consumers;

(E) Requiring all entities permitted, licensed, or regulated under this subchapter to provide to the board all documents in response to information requests by the board pursuant to the investigation of consumer complaints or board complaints against the permittee or licensee;

(F) Requiring all entities permitted, licensed, or regulated under this subchapter to provide itemized billing for towing or storage fees that explains how the charges were calculated; and

(G) Requiring all entities permitted, licensed, or regulated under this subchapter to maintain a copy of their current maximum rate schedule posted in a conspicuous place and readily accessible to the public.

(2) The promulgation and adoption of rules and regulations shall in all respects be in the manner provided by the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(3) After the promulgation and adoption of rules or regulations, any proposed change to add to, amend, repeal, or change any of the rules or regulations shall not have effect until reviewed and approved by the Subcommittee on Administrative Rules and

Regulations of the Legislative Council subsequent to the time that the General Assembly next meets in regular session unless a finding exists that imminent peril to the public health, safety, or welfare requires immediate adoption, amendment, or repeal of the rules or regulations.

(f) (1) The board shall have the authority to levy applicable towing business license fees not to exceed one hundred dollars (\$100) per license, and the board shall have the authority to levy an applicable tow vehicle safety permit fee not to exceed fifty dollars (\$50.00) per tow vehicle safety permit.

(2) Furthermore, the board shall also have the authority to impose late filing fees in an amount not to exceed the original amount of the license fee or safety permit fee.

(g) (1) The board shall have the authority to employ and discharge any personnel as may be necessary to administer and enforce the provisions of this subchapter and the rules and regulations promulgated hereunder.

(2) The board shall employ investigators to investigate consumer complaints related to overcharging for nonconsent towing, recovery, or storage fees, violations of § 27-50-1101, this subchapter, and violations of the rules promulgated by the board under this subchapter.

(h) The board shall have the authority to obtain office space, furniture, stationery, and other proper supplies and conveniences reasonably necessary to carry out the provisions of this subchapter.

(i) Each member of the board may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

(j) The board shall have the authority to establish a maximum amount to be charged by a towing business for each notification to an owner and a lienholder as required by this subchapter.

History. Acts 1989, No. 899, § 9; 1993, No. 1000, § 3; 1997, No. 250, § 246; 1997, No. 392, § 2; 1999, No. 1279, § 2; 2005, No. 1878, § 2; 2007, No. 861, § 2–4; 2007, No. 1053, § 2.

27-50-1204. Penalties.

(a) (1) The owner of a vehicle and the person who left the vehicle unattended or abandoned or any owner or operator waiving an owner's preference shall be liable for all reasonable costs of towing, recovery, storage, and other incidental costs related to such a removal.

(2) If the vehicle is sold by foreclosure under § 27-50-1209, the owner or operator shall be liable for such costs in excess of the proceeds of the sale of the vehicle.

(b) Any law enforcement agency that without reasonable justification fails to provide information to the towing and storage firm within twenty-four (24) hours as prescribed by this subchapter shall be liable to the towing and storage firm for any accrued storage fees between the expiration of the twenty-four-hour period and such time as the information is provided.

(c) Upon any complaint or on its own initiative when the Arkansas Towing and Recovery Board has reason to believe that a law enforcement officer failed to adhere to an owner preference request or otherwise violated this subchapter, the board may investigate the matter and submit its findings to proper law enforcement authorities.

(d) Any person, excluding law enforcement officers, who is determined by the board, after reasonable notice and opportunity for a fair and impartial hearing held in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq., to have committed an act that is in violation of this subchapter or any rules and regulations promulgated under this subchapter, is subject to civil penalties prescribed by the board, including monetary penalties not to exceed five thousand dollars (\$5,000) or the suspension or revocation of any towing license or permit, or both.

(e) Nothing in this section shall be construed to limit the right to seek judicial review of any determination of the board pursuant to the provisions of the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(f) (1) A penalty assessed by the board shall be paid no later than fifteen (15) days after the conclusion of the appeals process under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(2) If not paid timely, a license or permit may be suspended until the penalty is paid.

History. Acts 1993, No. 1000, § 10; 2005, No. 1878, § 4; 2005, No. 2211, § 2; 2007, No. 861, §§ 5, 6; 2007, No. 1053, §§ 3, 4, 5.

27-50-1205. Tagging.

Any law enforcement officer or code enforcement officer as defined by municipal ordinance observing a vehicle on or near a public way which appears to be unattended or abandoned shall:

(1) (A) Order immediate removal of any unattended, abandoned, disabled, or inoperative vehicle:

(i) Located within three feet (3') of the traveled surface of a public way; or

(ii) That appears to create an immediate and substantial hazard to the public; and

(B) Log the removal order accordingly; or

(2) Tag any unattended, abandoned, disabled, or inoperative vehicle located at a distance of three feet (3') or more by affixing securely a colored form or other easily observable sticker. The tag or sticker shall show:

(A) The date and time of tagging;

(B) That the vehicle will be removed pursuant to this subchapter unless the vehicle is removed within twenty-four (24) hours;

(C) The location and telephone number where more information may be obtained; and

(D) The identification of the officer.

History. Acts 1993, No. 1000, § 5; 1999, No. 1279, § 3; 2007, No. 100, § 1; 2007, No. 1053, § 6.

27-50-1206. Notice to storage firm.

(a) (1) Any order issued by a law enforcement officer to a licensed towing and storage firm to remove and store an unattended or abandoned vehicle shall provide information supplied from the records of the Office of Motor Vehicle, Arkansas Crime Information Center records, or the motor vehicle records of any other state indicating the name and address of the last registered owner, the name and address of the holder of any recorded lien on the vehicle, and the vehicle identification or serial number of the vehicle.

(2) If there is evidence in the vehicle indicating that the vehicle is registered in another state, the information shall be supplied from the motor vehicle records of that state.

(3) (A) If a law enforcement officer or other official issues a hold against the release of the vehicle, the law enforcement officer's order to remove and store the vehicle shall include a written explanation for the issuance of the hold.

(B) When the hold on the vehicle is released, the law enforcement officer or other official who issued the hold shall provide written notice of the release to the towing and storage firm.

(b) (1) In the event that readily available records fail to disclose the name of the owner or any lienholder of record, the law enforcement officer or his or her agency shall notify in writing the towing and storage firm that, after receiving the notice, shall perform a good faith search to locate documents or other evidence of ownership and lienholder information on or within the unattended or abandoned vehicle.

(2) For purposes of this subsection, a "good faith search" means that the towing and storage firm checks the unattended or abandoned property for any type of license plate, license plate record, temporary permit, inspection sticker, decal, or other evidence that may indicate a possible state of registration and title.

(3) The towing and storage firm shall provide in writing to the law enforcement officer or agency the results of the search and, if appropriate, certify that a physical search of the unattended or abandoned vehicle disclosed that no ownership documents were found and that a good faith search was conducted.

(c) (1) Within not more than twenty-four (24) hours from the order to remove, the officer involved or his or her agency shall contact the towing and storage firm advising of any unusual circumstances causing the delay of the required information that was not available to the officer at the time the order to remove was issued.

(2) The officer or agency shall provide the delayed information immediately upon receipt.

(d) When a vehicle is removed pursuant to this subchapter by law enforcement and is subject to impoundment or seizure pursuant to police power or any lawful order of court, the law enforcement officer shall provide to the towing and storage firm a written statement setting forth the conditions of release of the vehicle.

History. Acts 1993, No. 1000, § 6; 1997, No. 841, § 2; 2001, No. 1830, § 3; 2005, No. 1878, § 5; 2007, No. 1053, § 7.

27-50-1207. Removal of vehicles.

(a) (1) Any law enforcement agency which directs the removal of unattended or abandoned vehicles shall adopt a written vehicle removal policy, the provisions of which shall not be in conflict with this subchapter.

(2) (A) Any vehicle removal policy shall provide that owner preference as defined by this subchapter shall be offered to the owner, to his or her agent, or to any competent occupant of any disabled or inoperative vehicle except in those instances where an emergency exists or where the immediate clearing of a public thoroughfare mandates an expedited towing service.

(B) (1) If a law enforcement officer fails to provide an owner of a vehicle with an owner preference in a nonemergency situation, then the owner may file a complaint with the law enforcement agency that employs the law enforcement officer or the Arkansas Towing and Recovery Board, or both.

(2) Nothing in this subsection precludes a person who has been denied the right of owner preference from seeking any other legal or equitable remedy.

(3) Nothing in this section shall be construed to authorize the towing of a vehicle in violation of other provisions of this subchapter.

(b) All law enforcement officers shall comply with the policies prescribed by their agencies as to the removal of any unattended or abandoned vehicle as defined by this subchapter.

(c) No law enforcement officer shall:

(1) Suggest or recommend any particular towing and storage firm to the owner, his or her agent, or any competent occupant of any disabled or inoperative vehicle; or

(2) Accept gifts or special consideration from the owner of a towing business or anyone acting on the owner's behalf in relation to removal of vehicles as provided by this subchapter.

(d) Upon request, any law enforcement officer or his or her agency who orders a removal pursuant to this subchapter shall provide to the owner, to his or her agent, or to any competent occupant of the removed vehicle the name, location, and telephone number of the towing and storage firm requested to remove and store the vehicle.

(e) (1) Should the owner or lienholder of a vehicle removed pursuant to this subchapter consider that the removal of the vehicle was not legally justified or properly subject to a law enforcement hold, the owner or lienholder may within thirty (30) days after removal or within thirty (30) days after the receipt of notification of any law enforcement hold from the towing and storage firm, whichever is later, seek a review to determine whether the unattended or abandoned property was wrongfully removed or withheld from the owner through the following procedures:

(A) In the case of a vehicle removed by or at the direction of a state agency, by filing a petition with the Arkansas State Claims Commission;

(B) In the case of a vehicle removed by or at the direction of a county or city agency and when the county or city has established an administrative review process, by filing a petition according to the established administrative review process; and

(C) In all other cases, including when the county or city has failed to establish an administrative review process, by filing a petition in the circuit court in the county where the unattended or abandoned vehicle is stored.

(2) In the case of a final decision reached through a county or city administrative review, the owner or lienholder may appeal an adverse ruling to the circuit court in the county where the unattended or abandoned vehicle is stored.

(3) The petition shall name the state agency ordering the tow as a respondent and, when filed in circuit court, shall also name the towing company among the respondents if the towing company still possesses the vehicle. In the case of removal originated by an agency of a political subdivision of the state, the petition shall name the county, city, or town as a respondent.

(4) (A) If the vehicle and its contents are subject to impoundment or seizure by law enforcement pursuant to the Arkansas Rules of Criminal Procedure or pursuant to an order by any court, Rule 15 of the Arkansas Rules of Criminal Procedure shall exclusively govern the release of the vehicle and its contents to the extent applicable.

(B) Nothing in this section shall operate to defeat the lien held by the towing company under § 27-50-1208.

(f) (1) Upon the filing of the petition, the owner or lienholder may have the unattended or abandoned vehicle and contents released upon posting with the commission, with the court, or with the city or county clerk or other person designated by a political subdivision, as the case may be, a cash or surety bond equal to the amount of the charges for the towing and storage to ensure the payment of such charges in the event that he or she does not prevail.

(2) (A) Upon the posting of the bond and the payment of the applicable fees, the administrative decision maker, commission, or court, as the case may be, shall issue an order notifying the towing company and the respondent agency of the posting of the bond.

(B) Upon service of receipt of the order, the towing company shall release the stored property.

(3) At the time of release, after reasonable inspection, the owner or the lienholder shall give a receipt to the towing and storage firm reciting any claim for known loss or damage to the unattended or abandoned property or the contents thereof.

(g) Upon determining the respective rights of the parties, the final order of the administrative decision maker, commission, or court, as the case may be, shall provide for immediate payment in full of the reasonable recovery, towing, and storage fees by the owner or lienholder of the unattended or abandoned property or by the respective law enforcement agency.

(h) In cases where the owner or lienholder has posted a cash or surety bond to obtain immediate release and the owner or lienholder is found to be responsible for reasonable recovery, towing, and storage fees, the administrative decision maker, commission, or court, as the case may be, shall declare the bond to be forfeited, with the amount paid to the towing and storage firm to cover reasonable recovery, towing, and storage fees.

(i) Nothing in this section shall be construed to waive the sovereign immunity of the State of Arkansas nor any immunity granted to its political subdivisions.

History. Acts 1993, No. 1000, § 4; 1995, No. 815, § 1; 1997, No. 392, § 3; 2001, No. 1830, § 4; 2005, No. 1878, § 6; 2007, No. 1053, §§ 8, 9, 10.

27-50-1208. Possessory lien and notice to owners and lienholders.

(a) (1) The towing and storage firm shall have a first priority possessory lien on the vehicle and its contents for all reasonable charges for towing, recovery, and storage for which the owner is liable.

(2) (A) A possessory lien under this section attaches to not only the vehicle and its contents but also any trailer attached to the vehicle at the time it is towed and any contents of such trailer including, but not limited to, other vehicles or boats.

(B) A lien under this section shall not extend to the following items, without limitation:

- (i)** Personal or legal documents;
- (ii)** Medications;
- (iii)** Child-restraint seating;
- (iv)** Wallets or purses and the contents of such;
- (v)** Prescription eyeglasses;
- (vi)** Prosthetics;
- (vii)** Cell phones;
- (viii)** Photographs; and
- (ix)** Books.

(C) The items described in subdivision (a)(2)(B) of this section shall be released without charge by the towing and storage firm to the owner or operator of the motor vehicle or his or her duly authorized representative.

(b) The lien shall be perfected by:

(1) Maintaining possession;

(2) Mailing notice to the owner or owners and lienholders as shown on the data provided by the law enforcement agency involved as prescribed by this subchapter; or

(3) In the case of a vehicle removed pursuant to § 27-50-1101, giving notice to the last known registered owner or owners and lienholders as provided from the records of the:

(A) Office of Motor Vehicle;

(B) Arkansas Crime Information Center; or

(C) If known, motor vehicle records of any other state where the vehicle's registration indicates the name and address of the last registered owner and the name and address of the holder of any recorded lien, if any, on the vehicle.

(c) (1) The notice shall be mandatory and by certified mail, return receipt requested.

(2) The notice shall be posted not sooner than two (2) business days but within eight (8) business days after the date that the towing and storage firm receives the vehicle.

(d) (1) If within forty-eight (48) hours the ownership and lienholder information has not been received from the law enforcement agency requesting the removal of a vehicle pursuant to this subchapter, the towing and storage firm shall obtain information concerning the last known registered owner or owners and lienholders as provided from the records of the:

(A) Office of Motor Vehicle;

(B) Arkansas Crime Information Center; or

(C) If known, motor vehicle records of any other state where the vehicle's registration indicates the name and address of the last registered owner and the name and address of the holder of any recorded lien, if any, on the vehicle.

(2) (A) For the purpose of notices required by this section, if the data records of the Office of Motor Vehicle or the office of motor vehicles for the state where the vehicle is registered, if known, do not contain any information as to the last known registered owner or owners and lienholders, notice by publication one (1) time in one (1) newspaper of general circulation in the county where the vehicle was found unattended, abandoned, or improperly parked is sufficient notice under this section.

(B) The notice by publication may contain multiple listings of vehicles, shall be published within the time requirements prescribed for notice by certified mail, and shall have the same contents required for a notice by certified mail.

(e) (1) The notice shall contain the following information:

(A) The year, make, model, and vehicle identification number of the vehicle towed;

(B) The name, address, and telephone number of the storage facility;

(C) That the vehicle is in the possession of that towing and storage firm under police order, describing the general circumstances of any law enforcement or other official hold on the vehicle;

(D) That towing, storage, and administrative costs are accruing as a legal liability of the owner;

(E) That the towing and storage firm claims a first priority possessory lien on the vehicle and its contents for all such charges;

(F) That unless claimed within forty-five (45) days, the vehicle and its contents will be dismantled, destroyed, or sold at public sale to the highest bidder;

(G) That the failure to exercise the right to reclaim the vehicle and its contents within the time prescribed by this section constitutes a waiver by the owner and lienholder of all right, title, and interest in the vehicle and its contents and constitutes consent to the sale, dismantling, or destruction of the vehicle and its contents;

(H) That the owner or lienholder may retake possession at any time during business hours by appearing, proving ownership, and releasing the law enforcement or other official hold, if any, and by paying all charges or by other written arrangement between the owner or lienholder and the towing and storage firm;

(I) That should the owner consider that the original taking was not legally justified, he or she has a right for thirty (30) days to contest the original taking as described by § 27-50-1207; and

(J) That the owner of the vehicle or operator or his or her authorized representative may recover without charge any item described in subdivision (a)(2)(B) of this section by providing within forty-five (45) days to the towing and storage firm proof that the claimant is the registered owner of the vehicle or has been authorized by the registered owner of the vehicle to take possession of the items.

(2) A notice to an owner of a vehicle deemed abandoned on the premises of an

automobile repair facility under § 27-50-1101 shall also advise that the automobile repair person holds an absolute lien on the vehicle under § 18-45-201 et seq.

(f) Nothing in this section is to preclude the owner, lienholder, or agent from making alternative arrangements within the two-day to eight-day period with the towing and storage firm, waiving his or her rights to the notice requirement.

(g) When any vehicle reclaimed from the towing and storage firm by a lienholder contains contents not subject to the lienholder's interest, the lienholder shall be accountable to the owner of the contents in the same manner as the lienholder would in any other case of repossession of a vehicle, and the towing and recovery firm releasing the vehicle and its contents shall be relieved from all responsibility for the contents.

(h) (1) Any towing and storage firm that in good faith follows the procedures of this subchapter or the provisions of § 27-50-1101 shall not be subject to claims of unlawful detainer or conversion for vehicles or their contents for maintaining property pursuant to the possessory lien as provided by this subchapter.

(2) Any challenge to the removal and holding of an unattended or abandoned vehicle as provided by this subchapter shall be controlled exclusively by the provisions of § 27-50-1207.

(3) Nothing in this section shall be construed to limit liability of the towing and storage firm for any other act or omission otherwise actionable under statutory or common law.

History. Acts 1993, No. 1000, § 7; 1997, No. 392, § 4; 1997, No. 841, § 3; 1999, No. 1279, § 5; 2001, No. 1830, § 5; 2005, No. 1878, § 7; 2005, No. 2211, § 3; 2007, No. 506, §§ 1, 2; 2007, No. 861, §§ 7, 8; 2007, No. 1053, § 11; 2009, No. 483, § 4.

27-50-1209. Foreclosure of liens.

(a) (1) The failure of the owner or lienholder to exercise his, her, or its right to reclaim the vehicle and its contents within forty-five (45) days of the posting or publication of notice to owners and lienholders constitutes a waiver by the owner or lienholder of all right, title, and interest in the vehicle and its contents.

(2) If a law enforcement official or other official refuses to release any hold on the vehicle or its contents, the owner or lienholder has an additional twenty (20) days to reclaim the vehicle and its contents after the date when the hold is released.

(3) (A) The owner or lienholder may challenge any law enforcement official hold or other official hold under the procedures in § 27-50-1207(e).

(B) However, the provisions of § 27-50-1207(f) pertaining to release of the vehicle do not apply when the owner or lienholder challenges a law enforcement official hold or other official hold.

(b) (1) Except as provided in subsection (c) of this section, the towing and storage firm, municipality, or county that holds a perfected possessory lien on any vehicle and its contents not redeemed by its owner or security lienholder within the time frame provided by this section shall sell the vehicle and its contents at a nonjudicial public sale for cash.

(2) The sale shall not occur later than ninety (90) days after perfection of the lien or forty-five (45) days after the release of any law enforcement hold or other official hold, whichever is later.

(c) A vehicle that is held by a municipality or county on a storage lot owned and operated by the municipality or county may defer the public sale and make use of the vehicle for law enforcement purposes if:

(1) The municipality or county complies with the notice provisions of § 27-50-1208;

(2) The time frame as provided under subsection (a) of this section has expired;

and

(3) The municipality or county enacts an ordinance that:

(A) Declares the municipality's or the county's policy regarding the deferral for law enforcement purposes;

(B) Charges a specific municipal or county official with the responsibilities of:

(i) Identifying the vehicles to be used by the municipality or county; and

(ii) (a) Declaring a future date to publicly sell the vehicle pursuant to § 27-50-1210.

(b) The date of the sale shall be a maximum of six (6) months following the passage of the time frame for an owner or lienholder to reclaim a vehicle under subsection (a) of this section or as soon as is practicable if circumstances arise that prevent the sale on the declared sale date; and **(C)** Requires that the official ensure that the public sale proceed on the sale date declared in the ordinance.

(d) (1) The towing and storage firm, municipality, or county shall obtain written verification that the Arkansas Crime Information Center records do not list the vehicle as having been reported stolen.

(2) The verification shall be on a form prescribed by the center, the Office of Motor Vehicle, a municipal police department, a county sheriff's department, or the Department of Arkansas State Police.

(3) When the verification provided by this subsection is sought directly from the center by the towing and storage firm, the center may charge a fee, not to exceed ten dollars (\$10.00) per vehicle verification.

(e) (1) Notice of the sale shall be sent at least fifteen (15) days before the date of the sale by certified mail, no return receipt requested, to the registered owner and lienholder, if any.

(2) If the data records of the Office of Motor Vehicle or the office of motor vehicles for the state where the vehicle is registered do not contain any information as to the last known registered owner or owners or lienholders, the notice required under subdivision (e)(1) of this section is not required.

(3) Nothing in this subsection removes the requirement of notice of sale by publication under subsection (f) of this section.

(f) In addition to the notice by mail, notice of the sale shall be published in a newspaper of general circulation in the county at least one (1) time at least ten (10) days prior to the sale.

History. Acts 2001, No. 1830, § 6; 2005, No. 1878, § 8; 2005, No. 2189, § 1; 2005, No. 2211, § 4; 2007, No. 506, § 3; 2007, No. 1053, § 12.

27-50-1210. Nonjudicial public sale.

(a) After complying with the requirements of foreclosure of liens provided by this subchapter, ownership of the vehicle and its contents shall thereupon vest in the purchaser free of all liens of any nature. Should the nonjudicial public sale produce more funds than the sum of all charges, including the costs of the sale and including a reasonable charge for processing the paperwork, the excess shall be paid as follows:

(1) (A) If the vehicle was removed to an impound lot at the request of a law enforcement agency as authorized by this subchapter, the excess shall be maintained for a period of three (3) years by the entity that operates the impound lot.

(B) If the excess is not claimed during this period by the person legally entitled thereto, the moneys shall be paid to the entity operating the impound lot; or

(2) (A) If the vehicle was removed to a private impound lot pursuant to § 27-50-1101, the excess shall be paid to the county clerk to the account of the person legally entitled thereto.

(B) The Unclaimed Property Act, § 18-28-201 et seq., shall apply to any unclaimed funds or excess moneys that have been paid to the county clerk.

(b) Should the sale produce the same or less than the sum of all charges:

(1) At the election of the possessory lienholder, the sale of the vehicle may be cancelled and ownership of the vehicle and its contents shall thereupon vest in the possessory lienholder as purchaser free of all liens of any nature; and

(2) The possessory lienholder shall have a valid claim against the owner for the full amount of the charges, including the costs of the sale and including a reasonable charge for processing the paperwork, less the sale price of the vehicle and its contents.

(c) (1) Upon presentation of documentation to the Office of Motor Vehicle to the effect that the sale procedure provided in this subsection has been complied with protecting the rights of the owner or lienholder, the purchaser of the vehicle shall be entitled to receive a new title to the vehicle upon meeting other applicable administrative requirements of title and registration laws.

(2) The towing and storage firm shall execute an affidavit stating that the vehicle has been towed and stored as an unattended or abandoned vehicle and that notice has been given as required in this subchapter to the registered owners and all lienholders of record.

(3) The affidavit shall describe the vehicle by make, year, model, and vehicle identification number.

History. Acts 1993, No. 1000, § 9; 1997, No. 841, § 4; 2001, No. 1820, § 1; 2001, No. 1830, § 7; 2005, No. 1878, § 9; 2005, No. 2211, § 5; 2007, No. 1053, § 13.

27-50-1211. Disposition of funds.

(a) All fees, fines, and charges collected by the Arkansas Towing and Recovery Board under the provisions of this subchapter shall be paid to the secretary-treasurer, who shall be the custodian of all funds and shall deposit same in a bank or banks to be designated by the board.

(b) The secretary-treasurer shall execute a bond in the amount determined by the State Risk Manager pursuant to the blanket bond program as authorized in § 21-2-601 et seq. [repealed].

(c) The secretary-treasurer shall pay funds of the board only on vouchers signed by himself or herself and countersigned by the chair. The total expenses for all purposes and obligations of the board shall not exceed the total fees, charges, and other funds paid to the board under the provisions of this subchapter.

(d) The secretary-treasurer shall make semiannual financial reports in detail to the board not later than January 31 and July 31 of each year, which financial reports will be kept on permanent file by the board.

History. Acts 1993, No. 1000, § 11; 2005, No. 1878, § 10.

27-50-1212. Criminal penalties.

(a) It shall be unlawful for a person to:

(1) Operate a tow vehicle in violation of this subchapter;

(2) Operate a tow vehicle without obtaining a tow vehicle safety permit as required by the rules of the Arkansas Towing and Recovery Board;

(3) Operate a business engaging in nonconsensual towing of vehicles without first obtaining the proper tow business license as required by the rules of the board;

(4) Give false or forged evidence to the board or to any member or an employee thereof for the purpose of obtaining a license or a tow vehicle safety permit;

(5) Use or attempt to use an expired, suspended, or revoked license or tow vehicle safety permit; or

(6) Violate or aid or abet any violation of this subchapter.

(b) The Department of Arkansas State Police, the Arkansas Highway Police Division of the Arkansas State Highway and Transportation Department, and county and municipal authorities may enforce § 27-50-1101 et seq. and § 27-50-1201 et seq.

(c) A person who pleads guilty or nolo contendere to or is found guilty of any violation under this section shall be guilty of a misdemeanor and shall be sentenced to pay a fine of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500) or to be imprisoned for a period not exceeding ninety (90) days, or both.

(d) The fines imposed and collected under this section shall be remitted as follows:

(1) Fifty percent (50%) to the Administration of Justice Fund Section of the Office of Administrative Services of the Department of Finance and Administration by the tenth day of each month on a form provided by that office for deposit into the Arkansas Towing and Recovery Board treasury fund; and

(2) Fifty percent (50%) to the law enforcement agency issuing the violation.

(e) Each day of an unlawful practice proscribed by this section shall constitute a distinct and separate offense.

History. Acts 1997, No. 392, § 5; 2005, No. 2211, § 6; 2007, No. 861, § 9; 2009, No. 644, § 1.

27-50-1213. Limitation on removing from the state.

(a) A towing or wrecker service licensed in a state other than Arkansas shall only remove a vehicle that was involved in a motor vehicle accident in the State of Arkansas from the site of the accident to another state if the state in which the towing or wrecker service is licensed extends the same privilege to a towing or wrecker service that is licensed in Arkansas and operating in the other state.

(b) For the purpose of determining whether a state permits Arkansas-licensed wreckers and Arkansas-licensed towing vehicles to remove a vehicle that was involved in an accident in that state, any limitation imposed by a county, parish, city, or other political subdivision of that state is deemed an action of that state.

(c) (1) This section applies only to the initial removal of a vehicle from the site of an accident to a point of storage or repair.

(2) This section does not apply to the secondary towing of a vehicle after an investigation of a motor vehicle accident is completed.

(d) When towing a vehicle in this state, a towing or wrecker service licensed in a state other than Arkansas must comply with the provisions of this subchapter and § 27-35-112.

History. Acts 2005, No. 1807, § 1; 2007, No. 1053, § 14.

27-50-1214. Rules of order or procedure.

(a) The Arkansas Towing and Recovery Board shall prescribe its rules of order or procedure in hearings or other proceedings before it under this subchapter.

(b) However, rules of order or procedure shall not be in conflict or contrary to the provisions of this subchapter or the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 2005, No. 1878, § 1.

27-50-1215. Summons, citation, and subpoena.

(a) It shall be the duty of the sheriffs and constables of the counties of this state and of any employee of the Arkansas Towing and Recovery Board, when so directed by the board, to execute any summons, citation, or subpoena that the board may cause to be issued and to return the summons, citation, or subpoena to the board.

(b) (1) The sheriffs and constables serving and returning any summons, citation, or subpoena shall be paid the same fees as provided for those services in the circuit court.

(2) Any person, or a duly designated employee of the person, who appears before the board in response to a summons, citation, or subpoena shall be paid the same witness fee and mileage allowance as witnesses in the circuit court.

(c) (1) In case of failure or refusal on the part of any person to comply with any summons, citation, or subpoena issued and served as authorized, or in the case of the refusal of any person to testify or answer to any matter regarding that which he or she may be lawfully interrogated or the refusal of any person to produce his or her record

books and accounts relating to any matter regarding that which he or she may be lawfully interrogated, the circuit court of any county of the State of Arkansas, on application of the board, may:

(A) Issue an attachment for the person; and

(B) Compel the person to:

(i) Comply with the summons, citation, or subpoena;

(ii) Appear before the board or its designated employee;

(iii) Produce the documents specified in any subpoena duces tecum; and

(iv) Give his or her testimony upon such matters as he or she may be lawfully required.

(2) Any circuit court shall have the power to punish a person for contempt as in the case of disobedience of like process issued from or by any circuit court or by refusal to testify in the circuit court in response to the process, and the person shall be taxed with the costs of the proceedings.

History. Acts 2005, No. 1878, § 1.